BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CLYDE L. AND JOSEPHINE CHADWICK)

Appearances:

For Appellants: Josephine Chadwick, in pro. per.

For Respondent: Richard C. Creeggan
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Clyde L. and Josephine Chadwick against a proposed assessment of additional personal income tax and penalty in the total amount of $213.53 for the year 1967.

The questions presented are: (1) whether interest income reported on appellants' federal income tax return was subject to the California personal income tax; (2) whether certain pension disability payments were subject to the California tax; and (3) whether a 15 percent penalty for late filing was applicable.

Appellants moved from New York City to Pasadena, California, in 1966, and thereafter both were California residents. They did not file their 1967 personal income tax return until June 27, 1968. During the year 1967 appellant Clyde Chadwick was employed as a guard by Galbreath-Ruffin Corporation of Los Angeles, and Josephine Chadwick was employed as a saleslady by Sunset House in Los Angeles. Their return was prepared with the assistance of one of respondent's employees, and reported only $6,737 in income which appellants received from their California

employment.. The return indicated that federally reported income was the same.. A 15 percent penalty was imposed and paid for late filing on the amount reported.

Subsequently, respondent discovered appellants reported adjusted gross income of $12,742 for federal income tax purposes. At an interview with respondent prior to this appeal and subsequently at the'board hearing, appellants stated they had reported $2,350 in interest income on their -federal return. They alleged that this income was derived from United States Treasury obligations and, consequently, it was exempt from California personal income tax. They were afforded the opportunity to substantiate this contention, but no evidence in support of the assertion was ever presented. Interest on United States obligations is normally exempt from the state personal income tax. (Rev. & Tax. Code, § 17137.) This is true even though interest from such obligations is usually subject to the federal income tax.- In addition, an assessment is presumed-correct; it is necessary for appellants to show that it is erroneous, and mere unsupported statements do not overcome the presumption. (Hoefle v. Commissioner, 114 F.2d 713; Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414].) Under the circumstances, we conclude that respondent's action in denying appellants' protest with respect to this issue was proper.

The other unreported amount on the 1967 state return consisted of $3,732.60 in pension receipts. Appellant was retired from the New York City Fire Department in 1961 because of a nonservice connected disability, and was thereby entitled to an annual disability retirement pension. The fact that appellant's disability was nonservice connected was verified by the chief medical officer of the New York City Fire Department. The contributions made to the fire department pension fund by appellant were $5,181.63. He had received a total amount of $21,450 in pension benefits from his retirement date February 17, 1961, to December 31, 1966.

The California personal income tax is imposed upon the entire taxable income of residents of California and upon the income of nonresidents which is derived from sources within California. (Rev. & Tax. Code, § 17041.) Where a taxpayer's residency status changes, section 17596 of the Revenue and Taxation Code provides:

> When the status of a taxpayer changes from resident to nonresident, or from nonresident to resident, there shall be included in determining income from sources within or without this State, as the case may be, income and deductions accrued prior to the change of status even though not otherwise includible in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

This accrual treatment applies even though the taxpayer may be on the cash receipts and disbursements accounting basis. (Cal. Admin. Code, tit. 18, reg. 17596.)

Respondent's regulations provide, as do the federal income tax regulations and the case law, that under an accrual method of accounting income is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. (Cal. Admin. Code, tit. 18, reg. 17571(a); Treas. Reg. §1.446-1(c)(1)(ii); Spring City Foundry Co. v. Commissioner, 292 U.S. 182 [78L. Ed. 1200], reh. denied, 292 U.S.613[78 L. Ed. 1472].) If "there are substantial contingencies as to the taxpayer's right to receive, or uncertainty as to the amount he is to receive , an item of income does not accrue until the contingency or events have occurred and fixed the fact and amount of the sum involved. (Midwest Motor Exgress, Inc., 27 T.C. 167, aff'd,251 F.2d 405; San Francisco Stevedoring Co., 8 T.C. 222.)

Under Article I of Title B of Chapter 19 of the City of New York Administrative Code, appellant was entitled to monthly pension payments. Upon his death, provision was made for payment of a reduced allowance to the surviving widow, unless she remarried, to any child until after he reached the age of 18 years, or to any dependent parent or parents. When appellants arrived in California, they had a dependent child. There is some indication that the child was under 18 years of age.

By 1967, it is clear that all of Mr. Chadwick's contributions had been recovered. At that point in time appellants ' position was substantially similar to that of the taxpayers in Appeal of Henry D. and Rae Zlotnick, Cal. St. Bd. of Equal., May 6 1971; Appeal of Edward B. and Marion R. Flaherty, Cal. St. Bd. of Equal., Jan. 6, 1969;

and Appeal of Lee J. and Charlotte Wojack, Cal. St. Bd. of Equal., March 22, 1971. In each of those cases we held that the retired employee's right to his survival retirement benefits was contingent upon his survival and, therefore, there was no accrual of income within the meaning of section 17596 of the *Revenue* and Taxation Code prior to actual receipt.

In the instant case as in the Appeal of Henry D. and Rae Zlotnick, supra, if Mr. Chadwick had predeceased his wife after coming to California, she would have been entitled to a survivor annuity. It is also possible that their son would have been entitled to such an annuity. However, as in the Zlotnick appeal, the rights to the benefits payable were subject to the substantial contingencies of continued lives and, in addition, to other contingencies. In view of such substantial contingencies with respect to the items of income at issue, we conclude that they did not accrue prior to California residency.

Appellants argue that pursuant to the City of New York Administrative Code these rights were expressly exempt from any state tax, However, the sovereign authority of a jurisdiction is confined within its own territory and therefore the provision relied upon does not affect the outcome in this appeal. It is California's law which governs. (See Appeal of Lee J. and Charlotte Wojack, supra.)

For the above reasons we conclude that the disability retirement income was properly includible in income subject to tax in California.

'With respect to the penalty issue, section 18681 of the California Revenue and Taxation Code provides:

> If any taxpayer fails to make and file a return required by this, part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed 25' percent of the tax. The penalty so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

Appellants' joint return was filed more than two full months after its due date. (Rev. & Tax. Code, § 18432.) The admitted taxable income was well over the amount requiring a tax payment. No specific reason was given for late reporting. Under the circumstances, it is clear that the penalty was properly imposed.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Clyde L. and Josephine Chadwick against a proposed assessment of additional personal income tax and penalty in the total amount of $213.53 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of February, 1972, by the State Board of Equalization.

John W. Lynch, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary